IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/07/2003

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THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

Writ Petition No.10392 of 1996
and
WMP.No.13753 of 1996

E.V.Kumar ..... Petitioner

-Vs-

1. The Union of India,
rep. by the Ministry of Health and Family
Welfare (Department of Health)
Nirman Bhavan, New Delhi

2. The Union of India, rep. by therein
Lt. Governor, Pondicherry and
rep. by the Chief Secretary to
Government, Pondicherry

3. The Secretary to Government
Law Department, Government of Pondicherry
Pondicherry

4. The Director of Health and Family
Welfare Services, Pondicherry. ..... Respondents

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Prayer: Petition filed under Article 226 of the Constitution of India,
praying to issue a writ of Certiorarified mandamus, as stated therein.

For Petitioner : Mr.R.Gandhi
Senior Counsel
for R.G.Narendhiran

For Respondents : Mr.T.Murugesan Government Pleader (Pondicherry)

:ORDER

The petitioner, the former Additional District and Sessions Judge of Karaikal, Pondicherry has sought for a writ of certiorarified mandamus to call for the records relating to the order of the second respondent in G.O.Rt.No.573/95-LD

dated 13.12.1995, to quash the same and to direct the respondents to reimburse to the petitioner, the actual amount of expenditure incurred by the petitioner for taking treatment of undergoing Coronary by-pass surgery in the Apollo Hospitals, Madras as certified by the Chief Cardio Thoracic Surgeon of the said hospital, after deducting the medical advance granted by the second respondent under G.O.Rt.No.288/95-LD dated 05.06.1995.

2. In view of the undisputed facts, it is not necessary to deal with the factual contentions raised by the petitioner. Admittedly, the petitioner underwent coronary by-pass surgery in Apollo Hospitals, Madras and the Hospital is also duly authorised by the Pondicherry Government as one of the private hospitals recognised for coronary by- pass surgery, namely Annexure-I of the Office Memorandum dated 20.07.1994 .

3. It is also not disputed before me that the provision of Central services (Medical Attendance) Rules are applicable to the case of the petitioner herein.

Rule 6, of the Medical Attendance Rules is as follows: "6.(1) A Government servant shall be entitled, free of charge, to treatment --

(a) in such Government hospital at or near the place where he falls ill as can in the opinion of the authorised medical attendance provide the necessary and suitable treatment; or

(b) if there is no such hospital as is referred to in sub-clause (a) in such hospital other than a Government hospital at or near the place as can in the opinion of the authorised medical attendant, provide the necessary and suitable treatment.

(2) Where a Government servant is entitled under sub-rule(1), free of charge, to treatment in hospital, any amount paid by him on account of such treatment shall, on production of a certificate in writing by the authorised medical attendant in this behalf, be reimbursed to him by the Central Government: Provided that the controlling officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the controlling officer shall communicate to the claimant the reasons, in brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of forty-five days of the date of receipt of the order rejecting the claim."

4. Perusal of the above mentioned Rule says that it is open to the Government servant who is entitled to be treated in a hospital other than Government Hospital, if such hospital as referred to in SubClause(a) is not available, he can get treatment in a hospital other than Government Hospital at or near the place as can in the opinion of the authorised medical attendant, provide the necessary and suitable treatment. Therefore, there is no dispute over the fact that the petitioner was entitled to be treated at Apollo Hospitals, Madras and there is no dispute over the said fact.

5. The dispute in the present case is that as against the total claim of Rs.1,44,019/-, the Government has sanctioned a total sum of Rs.9 9,500/-. According to the Government, the package rate/deal arrangement with the private hospitals and the rate of coronary by- pass surgery for all private hospitals in respect of private ward was Rs.89,000 /- and Rs.10,500/- which was charged for Angiography test was reasonable. It was also certified that the rate of Rs.89,000/- charged by the Apollo Hospitals, Madras was also reasonable. Therefore, a total sum of Rs.99,500/- was paid and reimbursed to the petitioner.

6. It is further stated that the Government of India already recognised the package deal arrangement with the Private Hospitals and the rate for CAG/CABG and other investigations would be regulated on package deal basis. The package for coronary Angiography includes room rent from the date of admission to the date of discharge, services charges, nursing/ medical care, Surgeons and Anesthetists fee, operation theatre charges etc., but does not include diet, cosmetics, toiletary, telephone charges etc., which have to be borne by the beneficiaries themselves.

7. On a reading of Rule-6 as extracted above, there is no enabling provision for the Government to fix any ceiling/package deal. The actual amount paid by the patient to the hospital would be repayable except for the categories mentioned in the counter namely, diet, cosmetics, toiletary, telephone charges etc.,

8. A perusal of the bill submitted by the petitioner shows that he has not made any claim towards any of the aforementioned prohibited items. The bill only deals with the surgery, room rent, professional charges, Doctors consultation charges, miscellaneous charges for the use of special dye(Maxima) in view of the condition of the patient and the total amount is shown as Rs.1,44,019/-. Therefore, the bill does not include items which are disapproved by the respondents. As stated earlier, there is no limitation or ceiling in the Rules. It is not possible for the Central Government to issue an Office Memorandum overriding the rule which is statutory in character.

9. With the result, I am inclined to hold that the petitioner is entitled to the full amount as claimed by him, namely Rs.1,44,019/-.

10. The above mentioned conclusion of mine also receives approval by the Supreme Court in S.Jagannath Vs. Union of India and Others reported in ((1997) 2 SCC 87), wherein the Supreme Court has held that " if the Government Servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant."

11. The learned senior counsel appearing for the petitioner also claims interest on the amount of balance to be paid to the petitioner, on the ground that the petitioner has paid the amount due to the hospital on his discharge.

12. The learned counsel also relies on a Judgment of Justice Bakthavatsalam,J., in Ramayee V. Vs. The Commissioner of Pudukottai Municipality reported in (1882 WLR 330), where the learned Judge had ordered 18% interest.

13. Further reference is also made to the judgment of the Supreme Court in Hema Devi and Another Vs.State of Bihar and others reported in (2002(6) Supreme 417).

14. Considering the overall circumstances, I am inclined to order that the respondents shall pay the balance amount with interest at the rate of 12% per annum from the date when payment became due.

15. The writ petition is ordered accordingly. Consequently, WMP.No.13753 of 1996 is closed. No costs.

Index:Yes
Internet:Yes

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To

1. The Union of India, rep. by the Ministry of Health and Family Welfare (Department of Health) Nirman Bhavan, New Delhi

2. The Union of India, rep. by therein Lt. Governor, Pondicherry and rep. by the Chief Secretary to Government, Pondicherry

3. The Secretary to Government Law Department, Government of Pondicherry Pondicherry

4. The Director of Health and Family Welfare Services, Pondicherry.

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